Preliminary Small Business Economic Impact Statement Chapter 246-290 WAC Water Use Efficiency

Is a Small Business Economic Impact Statement Required for this Proposed Rule?

The Regulatory Fairness Act, RCW 19.85, requires agencies to determine whether proposed rules will have a disproportionate impact on small businesses and provide mitigation when appropriate. This Small Business Economic Impact Statement (SBEIS) has been prepared because this proposed rule imposes more than minor costs on small businesses. The Department of Health (DOH) made this determination by identifying the affected industries and using Minor Impact Tables developed by DOH. The affected industries are those with Standard Industrial Classification Code 4941 for Water Supply Industries. According to DOH's Minor Impact Tables the minor impact threshold for this classification is $66.10. This figure is based on a one-time cost of one percent of average revenue. The cost of this proposed rule exceeds $66.10.

Which Industries are Affected by this Proposed Rule?

The affected businesses are entities that own water systems that meet the definition of municipal water supplier in RCW 90.03.015. This includes community water systems serving more than 15 residential connections and some noncommunity water systems. DOH estimates that 2,124 community water systems and 770 noncommunity water systems will be affected by this proposed rule. The total number of businesses affected will be smaller because many entities own several water systems. For the purpose of this analysis, cost estimates are based on the cost to each water system. For more details about the water systems affected by this proposed rule, see Section 2 of DOH's *Preliminary Significant Analysis and Small Business Economic Impact Statement for Rule Concerning Chapter 246-290 WAC Water Use Efficiency.*

What are the Costs of Complying with this Proposed Rule?

DOH estimated the costs associated with this proposed rule and described them in detail in Section 6 of DOH's *Preliminary Significant Analysis and Small Business Economic Impact Statement for Rule Concerning Chapter 246-290 WAC Water Use Efficiency.* Since the cost of the proposed rule exceeds the minor cost threshold, DOH must determine whether the proposed rule will have a disproportionate impact on small businesses that must comply with the proposed rule and provide mitigation when appropriate. An analysis of the overall costs is in Section 5 of DOH's *Preliminary Significant Analysis and Small Business Economic Impact Statement for Rule Concerning Chapter 246-290 WAC Water Use Efficiency.* The next section of this analysis includes examples of the costs the department identified to evaluate the impact to small businesses.

Does this Proposed Rule Impose a Disproportionate Impact on Small Businesses?

The Regulatory Fairness Act requires agencies to:

> "…determine whether the proposed rule will have a disproportionate impact on small businesses, the impact statement must compare the cost of

compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules…"

Defining the set of water systems that represent the largest ten percent is difficult. The proposed rule is expected to affect approximately 3,000 water systems. The number of municipal water suppliers that operate these water systems is smaller because some own more than one water system. This analysis focuses on the water system as opposed to the municipal water supplier because implementation and compliance will be carried out on a system-by-system basis. The table below illustrates that the 300 water systems serving the largest number of total connections reach well into the "small" category of water systems. If the number of people served is used, which would be roughly proportional to volume of water sold, the set of large water systems are only a few very large water systems.

DOH concluded that the best way to illustrate how the proposed rule affects water systems of different sizes is to look at each of the four size categories used in Section 2 of DOH's *Preliminary Significant Analysis and Small Business Economic Impact Statement for Rule Concerning Chapter 246-290 WAC Water Use Efficiency.*

Community Water Systems Affected by the Proposed Water Use Efficiency Rule

Size Category	Residential Connections	Number of Water Systems	Percent of Water Systems	Number of Residents Served	Percent of Residents Served
Very Small	< 100	1,369	64%	131,050	2%
Small	100 – 999	549	26%	421,702	8%
Medium	1,000 – 9,999	169	8%	1,539,152	29%
Large	> 9,999	37	2%	3,212,226	61%
Total		**2,124**	**100%**	**5,304,130**	**100%**

The new costs that are not due to provisions taken directly from statute fall into two general categories: procedures and actions. Procedures include activities such as developing plans, holding meetings, collecting information, and submitting that information to DOH. Actions include water use efficiency program implementation, finding and repairing leaks, installing, reading, and maintaining meters. Except for the costs associated with service meters, DOH was either unable to determine the costs or the costs associated with this rule are already required by existing statute or rule.

Procedural Costs

Section 5, of DOH's *Preliminary Significant Analysis and Small Business Economic Impact Statement for Rule Concerning Chapter 246-290 WAC Water Use Efficiency* provides estimates for the procedural activities associated with the proposed rule. Those costs are summarized below. The costs used for this analysis are associated with water system plan development. Many small water systems are only required to develop a small water system management program. The water system plan costs were used because they are slightly higher. The cost of developing a Water Loss Control Action Plan is also included. This will not be required for all

water systems, but it is included here to reflect the higher cost that some water systems will accrue.

Average Annual Cost of Procedural Activities – Proposed Water Use Efficiency Rule

	Very Small < 100 Connections	Small 100 – 999 Connections	Medium 1,000 – 9,999 Connections	Large > 9,999 Connections
Procedural Cost for Water Systems Developing a Water System Plan	$1,364	$3,555	$7,484	$8,121
Water Loss Control Action Plan Development Costs	$348	$649	$877	$1247
Total	**$1,712**	**$4,204**	**$8,361**	**$9,368**

The Regulatory Fairness Act, RCW 19.85, directs agencies to determine if costs are disproportionate "…using one or more of the following as a basis for comparing costs:

(a) Cost per employee;
(b) Cost per hour of labor; or
(c) Cost per one hundred dollars of sales."

DOH staff conducted an extensive search of available data and was unable to find data related to number of employees, hours of labor, or sales for all affected business. U.S. Department of Labor and Industry statistics show that the smallest for-profit entities in the water supply industry have an average of one employee and the largest an average of 20 employees. DOH staff feel that this is representative of most entities in the water supply industry. This would not hold true for large cities such as Seattle and Spokane. Those are likely to have hundreds of employees.

To illustrate the cost of procedural activities associated with the proposed rule, the table below presents these cost using two approaches. The first shows the cost per connection using the average number of connections served by water systems in each size category. The second assumes an average number of employees for water systems in each size category. Using either approach, this proposed rule appears to have a disproportionate impact on small businesses.

Cost Comparison for Proposed Water Use Efficiency Rule

	Very Small < 100 Connections	Small 100 – 999 Connections	Medium 1,000 – 9,999 Connections	Large > 9,999 Connections
Procedural Costs	$1,712	$4,204	$8,361	$9,368
Average Number of Connections	40	324	3,218	27,014
Cost per Connection	**$43**	**$13**	**$3**	**< $1**
Average Number of Employees	1	2	20	150
Cost per Employees	**$1,712**	**$2,102**	**$418**	**$94**

Service Meter Costs

The cost of meter installation and maintenance was assessed only for water systems that are not already fully metered. Based on surveys conducted by DOH and experienced field staff, it is assumed that virtually all large water systems are fully metered and that approximately 40 percent of the smallest water systems are not. While the costs associated with service meters are the same for water systems of different sizes, the impact of that cost could be considered disproportionate, because more small water systems will need to install meters and the revenue base of smaller water systems is considerably smaller than large water systems.

If the Proposed Rule Imposes a Disproportionate Impact on Small Businesses, What Efforts were Taken to Reduce that Impact?

The proposed rule contains a number of features that were incorporated to minimize the cost and complexity of proposed rule implementation.

1. Planning requirements are integrated to the maximum extent possible with current planning requirements.
2. Data collection and reporting requirements are limited to only those elements that were deemed essential to meet the purposes of the law.
3. Goal-setting processes are structured to allow the municipal water supplier to combine them with their water system plan update process.
4. Municipal water suppliers are allowed to use existing processes to meet the public forum requirements.
5. Municipal water suppliers are allowed to measure production at any point prior to their distribution system. This will allow them to use existing source meters.
6. Performance reports include leakage data to avoid a separate reporting mechanism for the distribution system leakage standard.
7. Municipal water suppliers were given a generous amount of time (10 years) to install meters.
8. Municipal water suppliers may raise technical and economic issues related to the distribution system leakage standard in their Water Loss Control Action Plans.

A number of features were also incorporated specifically to minimize the burden to small municipal water suppliers.

1. Water systems that prepare small water system management programs have simplified requirements for source descriptions.
2. Water systems with fewer than 1,000 connections have simplified requirements for cost-effectiveness evaluations.
3. The number of water use efficiency measures that must be evaluated or implemented varies with water system size.
4. Water systems with fewer than 1,000 connections are not required to describe seasonal variations in consumption patterns.
5. The performance reporting requirement is delayed by one year for water systems with fewer than 1,000 connections.
6. Water systems with fewer than 1,000 connections are not required to assess the water savings from all measures they determine to be cost-effective but do not implement.

7. Water systems with fewer than 1,000 connections are not required to evaluate opportunities for reclaimed water.

How are Small Businesses Involved in the Development of this Proposed Rule?

DOH staff worked closely with constituents and the public to minimize the burden of this proposed rule. The primary mechanism for input was a subcommittee of the Washington Water Supply Advisory Committee to assist DOH with development of this regulation. The Water Use Efficiency Subcommittee consisted of 34 members, which included a cross-section of utilities, local governments, environmental-interest groups, business groups, state agencies, and utility customers. Tribal representatives also observed the process. Small water systems were given three seats on the Water Use Efficiency Subcommittee. One seat was given to a representative from business interests. Each meeting afforded time for public comments. In addition to committee members, small water system owners typically attended the meetings as members of the general public and provided comments. Repeatedly, the small water system representatives voiced the opinion that, while DOH should minimize costs to small water systems, those efforts should not dilute the basic requirements in the authorizing statute.

In July 2004, DOH distributed an informal water use efficiency regulation. This was sent to all Group A public water systems and stakeholder groups. All comments were reviewed and considered in revision of the proposed rule. DOH developed a written response to all comments received during this informal review.

DOH made additional efforts to obtain input from the Washington PUD Association. PUD's typically manage many small water systems and provided insight into the challenges facing small water systems.

DOH staff met with a committee member representing small water systems that also represented a business that owned and operated several small water systems regulated by the Utilities and Transportation Commission. Those meetings focused on the unique challenges faced by the Utilities and Transportation Commission-regulated entities.

DOH staff made several presentations during development of the regulation targeted toward small water systems. In particular, there were special sessions for small water systems during the 2004 Drinking Water Seminars and presentations made at the 2003 and 2004 Evergreen Rural Water of Washington and Water and Wastewater Operators of Washington conferences.

Conclusion

This proposed rule will have significant costs for all municipal water suppliers, including those that are small businesses. Those costs are expected to have a disproportionate impact on municipal water suppliers that own small water systems. DOH staff consulted with business interests and small water system owners throughout the rule development process and incorporated several provisions to minimize the cost of the proposed rule for small businesses while still ensuring it meets the intent of the Washington State Legislature.